Jurisdictional Statement

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SUPREME COURT, U.S.

No. 81-6055

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER, TERM 1981

OLGA HERNANDEZ, Appellant

VS

DEPARTMENT OF LABOR AND
HUMAN RESOURCES, ET AL., Appellee

ON APPEAL FROM THE SUPREME COURT
OF THE COMMONWEALTH OF PUERTO RICO

JURISDICTIONAL STATEMENT

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COUNSEL FOR APPELLANT

November 24, 1981

No. A-238

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No. A- 238

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER, TERM 1981

OLGA HERNANDEZ, Appellant

VS

DEPARTMENT OF LABOR AND HUMAN RESOURCES, ET AL., Appellee

ON APPEAL FROM THE SUPREME COURT OF THE COMMONWEALTH OF PUERTO RICO

JURISDICTIONAL STATEMENT

OLGA HERNANDEZ as a co-owner of speedy Motors Rewinding, the appellant, appeals from the final judgment of the Supreme Court of the Commonwealth of Puerto Rico, dated June 29, 1981, denying the appeal without comments.

QUESTION PRESENTED

Did the Supreme Court of the Commonwealth of Puerto Rico deny Appellant's Constitutional right to the due process and equal protection under the Fourteenth Amendment affirming state Superior Court Judgment without rendering opinion to important jurisdictional questions presented.

Did the State Agency and State Courts abuse its discretion by ruling that Appellant is liable under the Occupational Safety and Health Act, 29 L.P.R.A. Section 361 et seq; eventhough the business was closed for more than a year due financial problems?

OPINIONS BELOW

The opinion of the Supreme Court of the Commonwealth of Puerto Rico, which appears in the appendix hereto, p. 1a, infra, is not reported. No opinion was rendered.

On March 30, 1981 the Superior Court of Puerto Rico, San Juan Civil Court, rendered Judgment affirming the Secretary's decision denying Appellant revision, which appears in the appendix hereto, p. 2a, infra.

On March 27, 1980 the Hearing Examiner Occup_ational Safety and Health Administration, Secretary of Labor and Human Resources, issued report to the Secretary of Labor and Human Resourses whereat Appellant was found guilty in violations of the Puerto Rico OSHA's Regulations and was sentenced to pay $ 225.00 In the decision nothing was said in regard to a maximum fine of $ 1,000,00 imposed upon the Appellant because she refused to summons her ex-employees. The business was closed for several months. An Interlocutory Question was raised before the Secretary of Labor and he decided that the question should be determined at the end of the proceeding. Nothing was said at the end of the proceeding. Appellant was asked to pay the $ 1,000.00 fine, which appears in the appendix hereto, p. 3a, infra.

JURISDICTION

The appeal before the Supreme Court of the Commonwealth of Puerto Rico was denied without comments on June,4, 1981. A motion for rehearing was entertained and denied on June 29, 1981 without comments, which appears appendix hereto, p. 1 a. infra. On August 14, 1981 a Notice of Appeal to the Supreme Court of the United States was filed; which appears appendix hereto, p. 4, infra. An application for an extension of time was granted by Hon. William J. Brennan, Jr, from this Court to include November 26, 1981, which appears appendix hereto, p. 5a, infra. This Court's jurisdiction is invoked under 28 U.S.C.A. Section 1258(2), which authorizes an appeal from the Supreme Court of the Commonwealth of Puerto Rico.

CONSTITUTIONAL, STATUTORY AND REGULATIONS INVOLVED

Fifth Amendment, United States Constitution:

"No person shall... Be deprieved of life, liberty or property, without due process of Law... "

Fourteenth Amendment, United States Constitution:

"... Nor deny to any person within its jurisdiction the equal protection of the laws... "

STATUTORY PROVISIONS

On December 29, 1970 Congress enacted Public Law 91-596,84 Stat. 1591 creating the Occupational Safety and Health Act, see 1970 U.S. Code Cong. and Adm. News, p.5177. The act is commonly known as OSHA. (29 U.S.C. Section 651 et seq, hereinafter Act).

Section 652(7) in part provides:

"(7) The term "State" imcludes a State of the United States, the District of Columbia, Puerto Rico... "

Section 653(a) in part previdés:

"(a) This chapter shall apply with respect to employment performed in a workplace in a state, The District of Columbia, the Commonwealth of Puerto Rico..... "

On August 5, 1975 the Legislature of the Commonwealth of Puerto Rico enacted Law No. 16, Occupational Safety and Health Law, (29 L.P.R.A. Sections 361 et seq) under direct supervision and control of the Department of Labor and Human Resources, Commonwealth of Puerto Rico, appellee in this case at bar. This law is almost similar to the Act mentioned above except the judicial review.

Section 361 F (6) of 29 L. P. R. A.-
Duties and authorities of the Secretary - provides

"(6) To impose administratives Penalties for violations of section 361 thru 361bb of this title or standards,rules, regulations and orders adopted or promulgated in accordance with sections 361 to 361bb of this title;... "

Section 361s(c) of 29 L.P.R.A. - Procedure of Execution - pertiment part provides:

"(c) If an employer notifies the Secretary that he is going to object the summon under Section 361r(a) of this title... The Secretary will notify a hearing examiner about the objection and the hearing examiner will give the opportunity to a public hearing. The hearing examiner will issue an order,

based on a determination of facts, confirming, modifying or revoking the summon of the Secretary.... And that order will be final by the Secretary within thirty (30) days if the Secretary does not decide to review the order. During such period of 30 days the Secretary may motu propio or by petition initiate a revision of the Hearing Examiner. The Secretary may confirm, modify or revoke the determinations of the Hearing examiner... "

Section 361 u. Judicial Review - in pertinent part provides:

"(a) Any person adversely affected o perjudicated by the final order of the Secretary per subsection (c) of Section 361 s of this title may obtain a revision before the Superior Court, Appellate Court... by filing and appeal within thirty (30) days from the decision of the Hearing Examiner became the final decision of the Secretary or after the final notification of the order by the Secretary... "

REGULATIONS

The regulations and standards are published under 29 C.F.R. 1903 et seq and the Review Commission's Rules of Procedure, 29 C.F.R. 2200.1.

In the Commonwalth of Puerto Rico the Secretary of Labor and Human Resources promulgates it own regulations.

On December 23, 1977 Regulation Number 9 was approved by the Secretary Section 2200 et seq.

Section 2200,60 - Duties and Powers of the Hearing - Examiner. See p. , infra

Section 2200.90 - Decisions and Reports of the Hearing examiner. See p. , infra .

Section 2200.91 (A). Review by the Secretary.

See p. , infra.

RAISING THE FEDERAL QUESTION

At the earliest stage of the proceedings bellow the Appellant raised the claim, in an oral motion to dismiss the proceedings for violation of the Occupational Health and Safety Law, 29 L.P.R.A. Section 361 et seq. and Regulation Number 9, Sections 2200. Et seq. as the shop was closed for good reasons and in good faith. The continuation of the proceedings was "unconstitutional for repugnancy to the due process of law and the equal protection of the laws provision of the Fifth and Fourteenth Amendments to the United States Constitution. " Findings of Fact and Recommendation of the Hearing Examiner, p. , infra; the Secretary of Labor and Human Resources never issued a decision to support the Hearing Examiner's decision. The opinion of the Superior Court of San Juan, Puerto Rico, p. , infra sustained the decision of the Secretary in an sketchy decision. The Supreme Court of the Commonwealth of Puerto Rico denied the appeal without comment. The Fifth and Fourteenth Amendments claim were reiterated by Appellant before the Supreme Court of the Commonwealth of Puerto Rico. There she renewed her motion

to dismiss the proceedings "on the ground that the Law and Regulations are unconstitutional for the reason that they deprive her to the due process of law and the equal protections of the laws as guaranteed by the United States and the Commonwealth of Puerto Rico Constitutions." It thus considered and expressly rejected this federal constitutional claims.

STATEMENT OF THE CASE

Appellant's husband, Paul Hernández, after he recuperated from his head injuries received in combat during World War, II [redacted] on or about the year 1950, established a repair shop for repairing commercial air conditioners and electrical motors, He complied with all Labor State Laws.

Around the year 1975, his nervous condition worsen he decided not to operate the business any longer and his wife, Olga Hernandez, Appellant, decided to continue the management and control of the business.

At the end of each year, a Christmas party and the bonus were given to the eight employees.

At the end of the year 1978, the attitude of the employees changed and went into a strike. The National Labor Union of Puerto Rico, a left - wing organization intervened immediately. The Union inmediately filed charges against the employer before the Natural Labor Relations Board. They also filed a complaint before the Occupational Health and Safety Office (Federal Agency).

This agency made an inspection and the report was submitted to the State Agency; who in-turn submitted a penalty to the employer.

During the year 1978 the business was operating under a loss which amounted at the end of the year to $ 8,000.00 plus the strike, Appellant decided to close the shop. Letters were sent to all the employees and to the different state and Federal Agency. The shop was closed on March 9,1979.

Eventhough the shop was closed OHSO continued with the proceedings.

On June 26, 1979 the Appellant was penalized for $ 1,000.00 because she did not notify her former employees that a hearing was going to be held.

On July 3, 1979 Appellant filed an appeal before the Secretary of Labor and Human Resources reference the penalty and that the shop was closed in good faith.

On October 31, 1979 the Secretary decided that the case should continued and the penalty be decided at the end of the proceedings.

On March 18, 1980 a final hearing was held. The Union was not represented; eventhough they were summoned.

On March 21, 1980 the Hearing Examiner issued his final order penalizing the Appellant for The violations of the shop in the amount of $ 225.00 but he failed to mention about the penalty of the $ 1,000.00 see P. , infra.

On April 23, 1980 Appellant received a letter from the Legal Division, OHSO, requesting payment in the amount of $1,225.00 .

On May 21, 1980 we sent a letter to the Secretary appealing the fine; but he denied to consider it. Upon reconsideration, also denied.

No decision was issued by the Secretary.

On July 3, 1980 Appellant filed a Petition for Revision before the Superior Court of San Juan, Puerto Rico alleging violations of the Constitutions of the United Stated and Puerto Rico, supra.

On March 30. 1981 the Revision was denied.

On April 21, 1981 an Appeal was filed before the Supreme Court of the Commonwealth of Puerto Rico; alleging violations of the Constitutions of the United States and Commonwealth of Puerto Rico; supra.

On June 4, 1981 the Supreme Court denied the appeal without comments.

On rehearing- denied on June 29,1981.

THE QUESTIONS PRESENTED ARE SUBSTANTIAL

Appellant submits that the actions, opinion and judgment below present substantial questions warranting the acceptance of jurisdiction.

The first substantial question is whether the Supreme Court of the Commonwealth of Puerto Rico denying Appellant's Constitutional right to the due process of Law and equal protection of laws under the Fifth and Fourteenth Amendments of the Constitution of the United States affirming State Superior Court Judgment without rendering an opinion

Under the facts of this case.

Appellant has standing to claim the unconstitutional of the law, Law No. 16, Occupational Safety and Health Law (29 L.P.R.A. Sections 361, et seg.)

United States vs Reichardson, 418 U.S. 166 (1974).

Schlesinger vs Reservists Comm. to Stop the War, 418 U.S.208 (1974)

On July 3, 1950 Congress enacted Public Law 600, Puerto Rican Federal Relations Act. 64Stat 319 effective July 25, 1952. Organizing a constitutional government for the people of Puerto Rico.

Section 9, in pertinent part provides:

"that the statutory laws of the United States not locally inapplicable except as herinbefore of hereinafter otherwise provited, shall have the same force and in Puerto Rico as in the United States, except.... "

In order that a Congressional Act is applicable to Puerto Rico, the Act most so stated.

The Occupational Health and Safety Act, 29, U.S.C.A. Section 653, provides:

"(a) This chapter shall apply with respect to employment performed in a workplace in a State... ...The Commonwealth of Puerto Rico... "

In Puerto Rico operates, OHSA, as a Federal Agency under the U.S. Department of Labor.

The Occupational Health and Safety Law of the Commonwealth of Puerto Rico, Law Number 16, Approved on August 5, 1975, 29 L.P.R.A. Section 361 et seg.

Section 631U- Judicial Review - is in conflict with Judicial Review the Federal Act as the remedies for judicial review are ambiguous, arbitrary, unreasonable, contradictory and not in accordance with the Federal Act. (29 U.S.C.A. Section 660.) The Law or part of it is unconstitutional because it is repugnant to the Constitution of the United States and that it beard no reasonable relation to the public interest it pursues. Nebbia vs New York, 291 U.S.502 (1934).

The decision of the Hearing Examiner is erroneous and should not prevail.

The Legislature of Commonwealth of Puerto Rico should not have approved the law because of the preempted jurisdiction since it clashes with the Federal Act.

The Police Power of the State is not ilimited. They can legislate but along as it is not repugnant to the Constitution of the United States and inconsistent with the Federal Acts. Donovan vs Huffines Steel Co., 9 OSHA cases 1762, 49 LW 2764.

This Honorable Court have held that Puerto Rico is subject to the Due Process Clause of either the Fifth or Fourteenth Amendment. Calero Toledo vs Pearson Yacht Leasing Co., 416 U.S. 663, 668-669 (1974), and the equal protection guarantee of either tne Fifth or the Fourteenth Amendment, Examining Board vs Flores de Otero, 426 U.S. 572,599-601 (1976).

Did the Supreme Court of the Commonwealth of Puerto Rico deny Appellant's Constitutional right of due process and equal protection under the Fourteenth Amendment by affirming the

Superior Court Judgement without rendering opinion to important jurisdictional question presened?

The answer is yes. Appellant was not afforded a full and fair judicial review as granted to any employer in the United States, therefore violating the due process and the equal protection of the Laws as protected by the Constitution of The Uniteu States. Schneider vs Rusk, 377 U.S. 163 (1964). Weinberger vs Wiesenfeld, 420 U.S. 636 (1975).

The next substantial issue is presented by Appellant that the State Agency and State Courts abuse its discretion by ruling that Appellant is liable under the Ocupational Safety and Health Law, (29 L.P.R.A. Sections 361, et seg;) eventhough the business was closed and the proceedings continued.

On March 9, 1979 Appellant closed the repair shop in good faith and there was "good cause" to close it;

1. Economical conditions. In the Income-Tax Return filed for the year 1978, the business showed a net lost of $ 8,000.00.

2. Appellant's husband mental condition continues worsening.

3. Appellant unable to control and manage the repair shop properly due to her unexperience.

4. Letters were sent to all Federal and State Agencies dealing with labor relationship.

5. The National Labor Relations Board closed the claim filed by the Union for unfair practice.

6. In August 1980 the repair shop was sold.

7. No reasons to violate the public interest of the law.

The proceedings continued until March 21, 1980.

May be this is the first case before this Honorable Court.

We are not including appendix as stated, supra. See footnotes.

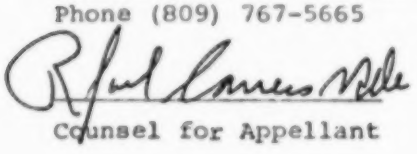
CONCLUSION

For these reasons, this Court should note probable jurisdiction of this appeal.

Respectfully submitted.

RAFAEL CARRERAS VALLE
P. O. Box 20399
Rio Piedras, Puerto Rico 00928
Phone (809) 767-5665

November 24, 1981



Counsel for Appellant

FOOTNOTES

1). This appeal is filed in Forma Pauperis as a Motion and Affidavit were filed on September 11, 1981 and affixed to the Application for Extension of time to Docked Petition for Appeal.

2). No decisions from Courts below or other important documents are not submitted because the Supreme Court Translation Unit, San Juan, Puerto Rico, has not finished them. May be Appellee will submit them.

3). This case could be entered as a "Class Action suit" may be many employers in Puerto Rico are affected.

NO. A-238
IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER, TERM 1981

OLGA HERNANDEZ, Appellant

VS

DEPARTMENT OF LABOR AND HUMAN RESOURCES, ET AL., Appellee

ON APPEAL FROM THE SUPREME COURT OF THE COMMONWEALTH OF PUERTO RICO

JURISDICTIONAL STATEMENT

CERTIFICATE OF SERVICE BY MAIL

I HEREBY CERTIFY that on this same date, a copy of the foregoing documents were mailed, first class, postage prepaid to:

The Governor of the
Commonwealth of Puerto Rico
thru the Secretary of Justice
P. O. Box 192
San Juan, Puerto Rico, 00902

RAFAEL CARRERAS VALLE
APPELLANT'S ATTORNEY

PHONE (809) 767-5665

81-6055

NO. ~~A-138~~

IN THE

SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1981

SPEEDY MOTORS REWINDING, Petitioner

Vs.

DEPARTMENT OF LABOR AND
HUMAN RESOURCES AND THE
COMMONWEALTH OF PUERTO RICO, Respondents

AFFIDAVIT IN SUPPORT OF MOTION
TO PROCEED ON APPEAL IN
FORMA PAUPERIS

CERTIFICETE OF SERVICE BY MAIL

I HEREBY CERTIFY that on this same date, a copy of the foregoing documents were mailed, first class, postage. prepaid to:

The Governor of the
Commonwealth of Puerto Rico
Thru the Secretary of Justice
P. O. Box 192
San Juan, Puerto Rico 00902

RAFAEL CARRERAS VALLE
Petitioner's Attorney

Phone (809) 767-5665

No. 81-6055

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1981

SPEEDY MOTORS REWINDING,
Petitioner

VS

DEPARTMENT OF LABOR AND
HUMAN RESOURCES AND THE
COMMONWEALTH OF PUERTO RICO,
Respondents

PETITION TO PROCEED IN FORMA PAUPERIS

RAFAEL CARRERAS VALLE
Counsel for Petitioner
P. O. Box 20399
Rio Piedras, Puerto Rico 00928
Phone (809) 767- 5665

September 11, 1981

NO. 81-
IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1981

SPEEDY MOTORS REWINDING, Petitioner

VS

DEPARTMENT OF LABOR AND
HUMAN RESOURCES AND THE
COMMONWEALTH OF PUERTO RICO, Respondents

PETITION TO PROCEED IN FORMA PAUPERIS

COMES NOW PLAINTIFF, OLGA HERNANDEZ, and states to the Court that is now, and has been unemployed since the year 1979.

That Plaintiff is destitute and without funds, and makes this Petition in support of his Motion to Proceed in Forma Pauperis in the above entitled matter without prepayment of fees or costs, or giving security therefor.

WHEREFORE, Plaintiff prays that she be allowed to proceed in forma pauperis, pursuant to 28 U.S.C.A. Section 1915.

Rio Piedras, Puerto Rico, September 11,1981

Rafael Carreras Valle
Petitioner's Attorney
P. O. Box 20399
Rio Piedras, Puerto Rico 00928
Tel. 767-5665

No. 81-

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1981

SUPER Y MOTORS (WINDING)
Petitioner

VS

DEPARTMENT OF LABOR AND
HUMAN RESOURCES AND THE
COMMONWEALTH OF PUERTO RICO,
Respondents

AFFIDAVIT IN SUPPORT OF MOTION
TO PROCEED ON APPEAL IN
FORMA PAUPERIS

RAFAEL CARRERAS VALLE, ESQUIRE
Counsel for Petitioner
P. O. Box 20399
Rio Piedras, Puerto Rico 00928
Phone (809) 767-5665

September 21, 1981

NO. 81-
IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1981

SPEEDY MOTORS REWINDING, Petitioner

VS

DEPARTMENT OF LABOR AND
HUMAN RESOURCES AND THE
COMMONWEALTH OF PUERTO RICO, Respondents

AFFIDAVIT IN SUPPORT OF MOTION TO PROCEED ON APPEAL IN FORMA PAUPERIS

To the Honorable William J. Brennan, Jr, Associate Justoce of the Supreme Court and Circuit Justice for the First Circuit:

Application is here made pursuant to Rule 46.1, 28.2 Supreme Court Rules- the 1980 Revisions, the petitioner, Olga Hernández, asks leave to file appeal to the United States Court of Appeals for the First Circuit without prepayment of costs and to proceed in forma pauperis Affidavit is included.

I, OLGA HERNANDEZ, being first duly sworn, depose and say that I am the Petitioner, in the above entitled case; that in support of my motion to proceed on appeal without being required to prepay fees, costs or give security therefor, I state that because of my poverty I am unable to pay the costs of said proceeding of to give security therefor; that I believe I am entitled to redress:

I further swear that the responses which I have made to the questions and instructions below relating to my ability to pay the cost of prosecuting the appeal is true.

1. Are you presently employed?

No

(b) The business was closed in March 1979 due to financial problems. During the year 1978 the business had a loss of $ 8,000.00.

2. Have you received within the past twelve months any income from a business, profession or other form of self employment, or in the form of rent payments, interest, dividends, or other source?

No

3. Do you own any cash or checking or savings account?

No

4. Do you own any real estate, stocks, bonds, notes automobiles, or other valuable property (excluding ordinary household furnishings and clothing)?

NO. 81-

No

5. List the persons who are dependent upon you for support and state your relationship to those persons.

None

I understand that a false statement or answer to any questions in this affidavit will subject me to penalties for perjury.

OLGA HERNANDEZ
Petitioner

Affidavit Number --3118--

SUBSCRIBED AND SWORN TO before me this 14th day of September, 1981.

JOSE ROMAN BORGOS
Notary Public.

Rio Piedras, Puerto Rico, September 14th, 1981

RAFAEL CARRERAS VALLE
Counsel for Petitioner
P. O. Box 20399
Rio Piedras, Puerto Rico 00928

ORDER OF COURT

In reliance upon the representation set forth in the above application and affidavit; it is ordered that the petitioner in the above entitled proceeding be and he hereby is permitted to appeals said proceeding to conclusion without prepayment of Fees of Costs or Security thereof, Rafael Carreras Valle, Esquire is hereby designated to represent to petitioner.

, 1981

_____

Associate of Justice

Motion to Dismiss or Affirm

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No. A-238
IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER, TERM 1981

OLGA HENANDEZ, Appellant

VS

DEPARTMENT OF LABOR AND HUMAN RESOURCES ET AL., Appellant

ON APPEAL FROM THE SUPREME COURT OF THE COMMONWEALTH OF PUERTO RICO

APPENDIX JURISDICTIONAL STATEMENT

RAFAEL CARRERAS VALLE
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Rio Piedras, Puerto Rico 00928
Phone (809) 767-5665

COUNSEL FOR APPELLANT

November 25, 1981

IN THE SUPREME COURT OF PUERTO RICO

A-1

SPEEDY MOTORS REMINDING Defendant, Appellant v. SECRETARY OF LABOR AND HUMAN RESOURCES AND Commonwealth of Puerto Rico Plaintiff, Appellee	NO. O-81-221	Appeal from Superior Court, San Juan, Angel G. Hermida, Judge Judicial Review from an Administrative Decision

RESOLUTION

San Juan, Puerto Rico, June 29, 1981

Interpreting the writ from the appellants as a Reconsideration from our Resolution dated June 4, 1981, petition not granted.

The Court decreed and the Secretary Certifies. Chief Justice Mr. Trías Monge and Associate Justice Mr. Rigau did not intervene.

(s) Ernesto L. Chiesa

(t) Ernesto L. Chiesa

Secretary.

CERTIFICATE OF TRANSLATION FROM THE SPANISH TO ENGLISH LANGUAGE

I HEREBY CERTIFY that I have translated above document originally written in the spanish language and that this is a true English translation according to my best knowledge.

Rafael Carreras Valle
Attorney-at-Law

IN THE SUPERIOR COURT OF PUERTO RICO

SAN JUAN PART

Speedy Motors Rewinding
Plaintiff-appellant
v.
Carlos S. Quirós, etc.
Defendant-appellee

Civil No. 80-3624(906)

Re:

Judicial Review of Administrative Decision of the Secretary of Labor

JUDGMENT

After considering the petition for review and its addendum as well as appelle's motion to dismiss, the present appeal is set aside for want of jurisdiction. Since the Secretary denied the interlocutory appeal regarding the administrative fine of $1,000.00, plaintiff had to appeal that point again before the Secretary at the close of the case. Since it failed to do so within the term prescribed by law, it cannot petition the Court for review now.

Supposing that we had jurisdiction, we would deny the appeal on the merits. The Secretary was indeed empowered to fine plaintiff for the latter's continued refusal to comply with the simple procedure of notifying its employees, notification which was eventually made by the very agency by simply sending a letter to the Union which represents the employees of the plaintiff enterprise. See subdivisions (h) and (k) of Section 27, Act No. 16 of August 5, 1975, 29 L.P.R.A. 361X. It should be clarified that the fine should be paid to the Secretary

of the Treasury and not to the Secretary of Labor. See subdivision (m) of the aforementioned sec. 27.

TO BE ENTERED AND NOTIFIED.

San Juan, Puerto Rico, March 30, 1981.

(S)

Angel G. Hermida
Superior Court Judge

Department of Labor and Human Resources
Occupational Safety and Health Office
Office of the Trial Examiner
Prudencio Rivera Martínez Building
505 Muñoz Rivera Avenue - Corner to Domenech
Hato Rey, Puerto Rico 00918

Carlos S. Quirós, Secretary of Labor and Human Resources,

Plaintiff

v.

Sppedy Motors Rewinding,

Defendant

Case No: OSHE 79-33

Re: OSHO No. 6616-016

DECISION OF THE TRIAL EXAMINER

Attorney José E. Vilanova and Roberto Méndez, plaintiff's legal representatives, appeared at the hearing on the merits of the case, set to be held on March 18, 1980, at 9:00 a.m. The defendant appeared represented by attorney-at-law, Rafael Carreras Valle. The Unión Nacional de Trabajadores [National Workers Union] was duly notified of the setting but failed to appear.

The plaintiff filed a complaint against the defendant, based on a Summons and Notice of Penalty issued on April 19, 1979. The defendant challenged only the penalties imposed, hence, the present controversy is limited to determining the reasonability of such fines.

Both parties presented oral and documentary evidence in support of their contentions. In view of the result of the evidence offered and admitted, we draw the following:

FINDINGS OF FACT

1. As of March 6, 1979, the defendant met all the requirements to be considered as an employer under Act No. 16 of August 5, 1975.

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(Page 2 of 5)

2. The defendant Speedy Motors Rewinding is a business owned by Olga Hernández and Paul Hernández, duly established in the Commonwealth of Puerto Rico, with main offices at 1227 Ponce de León Avenue, Río Piedras, Puerto Rico 00926.

3. By March 6, 1979, the defendant was engaged in industrial motor repair, having ten employees for that purpose.

4. On March 6, 1979, an inspector of the plaintiff carried out an inspection of the defendant's working place, before and after which he met all procedural requirements.

"Serious" violation No. 1, Item 1(a)

5. In the repair shop the defendant had an immersion tank for motor parts, without providing aprons to those employees handling the corrosive liquid (acid).

6. The defendant did not provide rubber gloves to its employees nor did the latter use them for handling the corrosive liquid (acid). This happened in the immersion tank for motor parts found in the repair shop.

7. The defendant did not provide safety shoes to the mechanics working in the repair shop.

8. The above-said conditions were observed in three of defendant's employees who were performing said work indiscriminately.

9. Said employees were exposed to said condition, as well as to all the conditions enumerated below, for eight hours a day.

10. In the present conditions, the employees were very close to the risk because they could not perform

A-3
(Pages 3/5)

their work away from said place, risk which they assumed without any protection whatsoever.

[Translator's Note: Pages 3 to 14 of this document in Spanish are missing from the record of the case]

"Other" violation No. 2, Item 10

The absence of a support part on an emery polisher makes the work more difficult and at the same time the work would be deficient. This inconvenience requires a greater effort for performing such task, which should be far more simpler, and herein lies the risk of injury. However, the persons operating said machine are used to it and may control it which, in a sense, compensates, although not completely, the absence of said support part.

In view of the aforesaid we deem that it is correct to reduce the penalty to $20.00 and, considering the economic factor, we eliminate said penalty.

"Other" violation No. 2, Item 11

We do not think that the risk represented by the belt in question, which is 5 feet and 6 inches above the floor, is substantial; hence we eliminate the penalty imposed.

"Other" Violation No. 1, Item 12

We deem that the same rationale applied to the "other" violation No. 2, Item 1, should be applied to this one, and the penalty proposed, eliminated.

When examining the above-mentioned penalties, we took into consideration, besides the aforesaid, the fact that, in most of them, only three employees were affected. If

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more employees would have been affected, the penalties would have been affected otherwise.

ORDER

The civil penalty in "Serious" violation No. 1, Items 1(a) and (b), is reduced to the amount of $100.00.

The civil penalty in the "Serious" violation No. 1, Item 2, is reduced to the amount of $50.00.

The penalty for the "Other" violation No. 2, Item 1, is eliminated.

The penalty for the "Other" violation No. 2, Item 4, is eliminated.

The civil penalty for the "Other" violation No. 2, Item 5, is reduced to $15.00.

The civil penalty for the "Other" violation No. 2, Item 6, is fixed at $25.00.

The civil penalty for the "Other" violation No. 2, Item 7, is fixed at $15.00.

The civil penalty for the "Other" violation No. 2, Item 8, is fixed at $10.00.

The penalty for the "Other" violation No. 2, Item 9, is reduced to the amount of $10.00.

The penalty for the "Other" violation No. 2, Item 10, is eliminated.

The penalty for the "Other" violation No. 2, Item 11, is eliminated.

The penalty for the "Other" violation No. 2, Item 12, is eliminated.

In San Juan, Puerto Rico, this 21st day of March, 1980.

To be notified.

(Sgd.) Rafael Quiñones Manatou
Rafael Quiñones Manatou, Esq.
Trial Examiner

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(Page 5 of 6)

I CERTIFY that I sent a true and exact copy of these presents to attorney-at-law Ana L. López, Director, Office of Legal Affairs, Occupational Safety and Health Office, Department of Labor and Human Resources, Prudencio Rivera Martínez Building, 505 Muñoz Rivera Avenue, Hato Rey, Puerto Rico 00918, and by mail to attorney-at-law Rafael Carreras Valle, P.O. Box 20399, Río Piedras, Puerto Rico 00928, and to Mr. Arturo Grant Pardo, Unión Nacional de Trabajadores, Calle Marginal 24 (Altos), 65th Infantry Avenue, San Agustín Housing Development, Río Piedras, Puerto Rico 00924.

(Sgd.) _____
Santa de Jesús Santiago
Secretary

- Notice -

The order of the Trial Examiner. . . "and that order shall become the Secretary's final order thirty (30) days after notification unless a review is sought by the Secretary during said period. During such period of thirty (30) days the Secretary shall motu proprio or on request initiate the review of the examiner's decision." Section 20(c), Act No. 16 of August 5, 1975.

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IN THE SUPREME COURT OF PUERTO RICO

SPEEDY MOTORS REWINDING Defendant, Appellant, v. SECRETARY OF LABOR AND HUMAN RESOURCES AND COMMONWEALTH OF PUERTORICO PLAINTIFF, APPELLEE	NO. O-81-241	Appeal from Superior Court, San Juan Angel. G. Hermida, Judge Judicial Review from an Administrative Decisi

NOTICE OF APPEAL TO THE

SUPREME COURT OF THE UNITED STATES

TO THE HONORABLE COURT:

Notice is hereby given that Speedy Motors Rewinding the appellant above-named, hereby appeals to the Supreme Court of the United States from the final order of the Supreme Court of the Commonwealth of Puerto Rico, affirming the judgment of the complaint, entered herein on June 29, 1981 and received on July 27, 1981.

This appeal is taken pursuant to 28 U.S.C.A. 1258

Rio Piedras, Puerto Rico, August 14, 1981.

(s) RAFAEL CARRERAS VALLE

(t) RAFAEL CARRERAS VALLE
Attorney for Defendat,
Appellant,
P.O. Box 20399
Rio Piedras, Puerto Rico
00928
Phone (809) 767-5665

CERTIFICATE OF TRANSLATION FROM THE SPANISH

TO ENGLISH LANGUAGE

I HEREBY CERTIFY that I have translated above document originally written in the spanish language and that this is a true English translation according to my best Knowledge.

Rafael Carreras Valle
Attorney-at-Law

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OFFICE OF THE CLERK
SUPREME COURT OF THE UNITED STATES
WASHINGTON, D. C. 20543

September 21, 1981

Rafael Carreras Valle, Esq.
Post Office Box 20399
Rio Piedras, Puerto Rico 00928

RE: Speedy Motors Rewinding
v. Department of Labor and
Human Resources, et al.
A-238

Dear Mr. Valle:

Your application for an extension of time within which to docket an appeal in the above-entitled case has been presented to Justice Brennan who, on September 18, 1981, signed an order extending your time to and including November 26, 1981.

A copy of the Justice's order is enclosed.

Very truly yours,

ALEXANDER L. STEVAS, Clerk

By Robert W. Kuhn

Robert W. Kuhn
Assistant Clerk

encl.
cc: Secretary of Justice of Puerto Rico
Ernesto L. Chiesa, Secretary, Supreme Court of Puerto Rico

CHIEF CLERK'S CERTIFICATE

I, Lady Alfonso de Cumpiano, Chief Clerk of the Supreme Court of Puerto Rico, DO HEREBY CERTIFY:

That the annexed documents are photocopies of the official translation from Spanish into English (said translation having been made under the authority of Act No. 87 of May 31, 1972) of part of the record in case No. O-81-221, Speedy Motors Rewinding v. Secretary of Labor and Human Resources, the originals of which, in Spanish, are under my custody in this Office.

IN WITNESS WHEREOF, at the request of the interested party, and upon payment of the corresponding fees, I have hereunto set my hand and affixed the seal of this Court in San Juan, Puerto Rico, this 24th day of November 1981.

Lady Alfonso de Cumpiano
Chief Clerk
Supreme Court of Puerto Rico

No. A-238
IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1981

OLGA HERNANDEZ, Appellant

VS

DEPARTAMENT OF LABOR AND HUMAN RESOURCES, ET AL,, Appellee

ON APPEAL FROM THE SUPREME COURT OF THE COMMONWEALTH OF PUERTO RICO

APPENDIX TO JURISTICTIONAL STATEMENT

CERTIFICATE OF SERVICE BY MAIL.

I HEREBY CERTIFY THAT on this same date, a copy of the foregoing documents were mailed, first class, postage prepaid to:

The Governor of the
Commonwealth of Puerto Rico
Thru the Secretary of Justice
P. O..Box 192
San Juan, Puerto Rico 00902

RAFAEL CARRERAS VALLE
APPELLANT'S ATTORNEY

Phone (809) 767-5665